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Attorneys for Plaintiff,
KARA STEWART

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KARA STEWART, an individual

Plaintiff,

v.

FAY SERVICING, LLC; and DOES 1 through
10, inclusive,

Defendants.

Case No.: 3:24-cv-01775-RFL

**RESPONSE TO ORDER TO SHOW
CAUSE RE: CITIZENSHIP OF
DEFENDANT FAY SERVICING, LLC
AND PROOF OF SERVICE**

I. INTRODUCTION

Plaintiff hereby submits this Response to the Court's Order to Show Cause Re: Citizenship of Fay Servicing, LLC and Proof of Service.

II. STATEMENT OF RELEVANT PROCEDUARL FACTS

Plaintiff filed this action and an Ex Parte Application for Temporary Restraining Order on March 22, 2024. (Dkt. 1, 4.) Plaintiff alleged state law claims for violation of the Homeowner's Bill of Rights and an unfair business claim, and jurisdiction was premised on diversity jurisdiction pursuant to 28 U.S.C. § On March 25, 2024, the Court issued an Order to Show Cause Re: Citizenship of Defendant Fay Servicing, LLC and Proof of Service. (Dkt. 12.) Plaintiff was ordered to file a written response or First Amended Complaint by 12:00 pm on March 26, 2024. On March 25, 2024, Plaintiff filed a First Amended Complaint which incorporated federal questions and asserted federal question jurisdiction and supplemental jurisdiction pursuant to 28 USC §§ 1331, 1367.

III. PLAINTIFF'S AMENDED COMPLAINT PROPERLY ASSERTS FEDERAL QUESTION JURISDICTION.

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States. 28 USC § 1331. In the case at hand, Plaintiff has asserted three causes of action arising from Defendant's violations of 12 C.F.R. 1024.41. *See* FAC, first through third causes of action. In addition, Plaintiff properly asserts a related state court violation of Business and Profession Code § 17200 based on Defendant's violations of 12 C.F.R. 1024.41. FAC at ¶ 73. In addition, pursuant to 28 USC 1367(a), this Court has jurisdiction over Plaintiffs' claims for violation of California Civil Code §§ 2923.6, 2923.7, and the related Business and Profession Code § 17200 violations which are premised on these statutes.

Pursuant to Rule 15(c), an amendment to a pleading relates back to the date of the original pleading when "the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading". Fed. Rule Civ. Proc. 15(c)(1)(B). In the case at hand, Plaintiff's claims for violation of 12 CFR

1 1024.41 are premised on the same conduct, transaction, or occurrence as the claims for violation
2 of California Civil Code 2923.6. Therefore, Plaintiff's claims for violation of 12 CFR 1024.41
3 relate back to the original filing date, thus curing any subject matter jurisdictional issues in the
4 underlying Ex Parte Application for Temporary Restraining Order.

5 **IV. DEFENDANT FAY HAS ENTERED THIS CASE THROUGH COUNSEL AND**
6 **HAS BEEN SERVED WITH ALL OPERATIVE DOCUMENTS.**

7 On the afternoon of March 22, 2024, Plaintiff's counsel was contacted by Regina
8 McLendon of Locke Lord LLP regarding this matter. Ms. McLendon indicated that she would
9 know Monday, March 25, 2024 if she'd be retained for the matter and inquired about the
10 allegations and jurisdictional issues of the Complaint. Ms. McLendon also made note of the
11 judge's suggestion that the parties come to a stipulation and indicated that she would take
12 additional information back to Fay Servicing for consideration. On March 25, 2024, Plaintiff's
13 counsel emailed Ms. McLendon about a thirty-day postponement of the foreclosure sale so that
14 the parties could resolve the issues identified in Plaintiff's Ex Parte Application for Temporary
15 Restraining Order. At 11:20 am on March 25, 2024, Ms. McLendon indicated that she could not
16 accept service of documents or ex parte notices in this litigation. Therefore, Plaintiff's counsel
17 hired a process server to personally serve Fay Servicing, LLC's agent for service of process with
18 Plaintiff's Complaint, Ex Parte Application, and the Court's Briefing Order. Then, at
19 approximately 1:00 pm PST, Plaintiff filed a First Amended Complaint (Dkt. 14) and Plaintiff's
20 Supplemental Memorandum of Points and Authorities in Support of Ex Parte Application for
21 Temporary Restraining Order (Dkt. 15), which was included in the documents to be served
22 through Wyatt Process Service, LLC. Thereafter, Defendant Fay Servicing, LLC filed a Response
23 to the Ex Parte Application. (Dkt. 17).

24 On March 26, 2024, I emailed Plaintiff's First Amended Complaint (Dkt. 14) and
25 Supplemental Memorandum of Points and Authorities in Support of Ex Parte Application for
26 Temporary Restraining Order (Dkt. 15) to Regina McLendon (rmcclendon@lockelord.com).

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V. CONCLUSION

For the reasons set forth herein, good cause exists to grant the instant ex parte application and restrain Defendant from proceeding with the Trustee's Sale scheduled for March 27, 2024, until further order from this Court.

DATED: March 26, 2024

Respectfully submitted,

SHAPERO LAW FIRM, PC

/s/ Jessica Galletta

Sarah Shapero, Esq.

Jessica Galletta, Esq.

Attorneys for Plaintiff

KARA STEWART

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action. My business address is 100 Pine St., Ste. 530, San Francisco, CA 94111.

On March 26, 2024, I served the foregoing document described as:

RESPONSE TO ORDER TO SHOW CAUSE RE: CITIZENSHIP OF DEFENDANT FAY SERVICING, LLC AND PROOF OF SERVICE

On all interested parties in this action by email as stated on the following parties via the court's ECF system:

Regina J. McClendon
Managing Partner, San Francisco Office
Locke Lord LLP
101 Montgomery Street, Suite 1950
San Francisco, CA 94104
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F: 415-707-2186
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 26, 2024 at Charlotte, North Carolina.

/s/ Jessica Galletta

Jessica Galletta